IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 23RD JANUARY 2007 / 3RD MAGHA 1928

MACA.No. 167 of 2003(B)

OPMV.1269/1996 of MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

.....

APPELLANT/PETITIONER:

RAMESH, S/O.PRABHAKARA MENON,
CHANDRA MANAALATH, PONNURUTHY, VYTTILA P.O.,
KOCHI 19, (NEAR PONNURUNTHY ST.REETHA'S
CONVENT ROAD).

BY ADV. SRI.P.A.BAHULEYAN
SRI.O.F.JUSTIN

RESPONDENTS/RESPONDENTS:

---

1. THE DEPUTY CONSERVATOR,
COCHIN PORT TRUST,
COCHIN - 3.

2. PARAMESWARAN, HOUSE NO.19/1025,
PULLAR DESOM ROAD, PALLURUTHY,
ERNAKULAM.

3. THE NEW INDIA ASSURANCE CO.LTD.,
W.ISLAND, COCHIN - 3.

BY ADV. SRI.B.S.KRISHNAN (SR.)
SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN
SRI.A.C.DEVY

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 23/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

M.A.C.A. No.167 of 2003

Dated this the 23rd day of January, 2007

JUDGMENT

The appeal is filed by the petitioner in O.P.(MV) No.1269 of 1996 which was disposed of by the Tribunal along with O.P.(MV) Nos.1629, 1630 and 1631 of 1996 by a common judgment dated 28.5.2002.

2. The petitioner was an employee in Cochin Port Trust. On 29.10.1995, the appellant along with other claimants in the connected cases, was travelling in the vehicle of fire engine bearing registration No.KRF 5574 along Indira Gandhi road at Willingdon Island. The vehicle was being driven by the second respondent in the O.P.(MV). It was alleged that the second respondent drove the vehicle in a rash and negligent manner which resulted in the fire engine hitting on the rear side of another lorry bearing registration No.KLF 6260. The fire engine overturned. As a result, the appellant sustained injuries. He was taken to Port Trust Hospital for treatment. The appellant

claimed a total sum of Rupees One lakh as compensation.

3. Before the Tribunal, PW's 1 to 5 were examined and Exts. A1 to A17 were marked. PW1 is the appellant herein. PW5 is an eye witness to the accident. PW's 2 to 4 are the claimants in the other connected cases. Exts. A4, A6, A7, A10 and A11 relate to the appellant exclusively.

4. The Tribunal found that the accident occurred due to the negligence of the second respondent. The Tribunal awarded only a sum of Rs.6,750/- as compensation to the appellant. The Tribunal held that there is no evidence to show that the petitioner was treated as an inpatient and that Ext. A6 is not at all related to the injury sustained by the petitioner in the accident. Ext. A6 is a treatment certificate dated 24.9.1998 issued by the Assistant Medical Officer of Cochin Port Trust which would show that the appellant was admitted in the hospital on 27.5.1998 for “screw removal of old fracture”. Ext. A6 would show that the appellant was admitted on 27.5.1998 and operation was held on 29.5.1998 and the screw was removed. Medical leave was also granted for 20 days from 27.5.1998. It

has come out in evidence that he had undergone an operation immediately after the accident and that Ext. A6 relates to the second surgical operation. It is true that no separate certificate was issued to indicate that there was a surgery on the first occasion. However, Ext.A7 disability certificate would show that the appellant was “treated by open reduction” and “fixation by screw”. Ext. A7 disability certificate would show that there is permanent partial disability of 10% of the left leg of the appellant. Ext.A4 accident register-cum-wound certificate shows, at column 15, that the appellant was admitted as inpatient on 29.10.1995 in the Cochin Port Trust hospital. The evidence of PW1 shows that he was an inpatient in the hospital for 62 days and that he had to take leave for 233 days. The Tribunal awarded a sum of Rs.5,000/- towards compensation for pain and suffering. This finding was arrived at on the basis of Ext. A6 and on the basis that the appellant was not treated as an inpatient earlier. The Tribunal has not at all discussed the oral evidence in the case. I am of the view that the amount awarded to the appellant is quite inadequate, considering the facts and

circumstances of the case. Had the documentary and oral evidence been properly considered, definitely the appellant would have been held entitled to a higher amount of compensation. Since the Tribunal has not considered the evidence, I do not think it proper to refix the compensation on the basis of the evidence. I am of the view that the Tribunal has to decide the case afresh after considering the oral and documentary evidence in the case. Since the matter is being remanded, the appellant and other parties are also afforded an opportunity to adduce such other documentary or oral evidence as they wish to adduce.

In the result, the award passed by the Tribunal granting compensation of Rs.6,750/- to the appellant herein in O.P.(MV) No.1269/1996 is set aside. The Tribunal shall dispose of issue No.3 afresh after affording an opportunity to the parties to produce documentary and oral evidence as they wish to produce. The finding of the Tribunal that the accident occurred due to the negligence of the second respondent is not being interfered with. The parties shall appear before the Tribunal on 20th February,

2007. The Tribunal shall dispose of the case within a period of three months from the date fixed for appearance of the parties.

K.T.SANKARAN,
JUDGE

csl